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Kerajaan Malaysia & Ors v Norfazlin bt Zamani

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(NCVC)(W)-556–08 OF 2022
AZIZAH NAWAWI, MOHAMED ZAINI MAZLAN AND AZMI ARIFFIN JJCA
25 SEPTEMBER 2024

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Tort — Negligence — Medical negligence — Damages — Whether awards made by trial court for pain and suffering, aggravated damages and getting-up fees and out-of-pocket expenses were reasonable and did not warrant appellate intervention

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The respondent ('R'), who was a 32-year-old medical doctor who ran an aesthetic clinic with her husband as the clinic's manager, decided to have a normal delivery of her second child at the Selayang government hospital. R signed up as a full-paying patient, allowing her to choose the consultant of her choice for the delivery. However, when she arrived at the hospital with labour pains in the early hours of a Sunday, she discovered that the consultant of her choice was not available on weekends and that a junior medical officer at the hospital would be attending to her. Since there were signs of foetal distress, a decision was made to perform an emergency caesarean section. R gave birth to a healthy baby girl. However, during the operation, R's bladder was injured which, among other things, caused urine to leak into her peritoneal cavity resulting in infection and inflammation. An operation was done to deal with the leaked urine and a drainage tube was placed in the abdomen. Several days later, while the drainage tube was being removed, it snapped, leaving a portion still within the abdomen. R was again operated upon to remove the retained part of the broken tube. The pain and suffering R underwent as a result of the operations, coupled with her being unable to be with and care for her newborn baby during the days following the birth took a toll on her. She suffered severe depression and anxiety, took three months to recover from the ordeal and was unable to work during that period. When she unexpectedly became pregnant for the third time two years later, R suffered severe ante-natal anxiety disorder which caused her to want to abort her pregnancy and remove her fallopian tubes to avoid getting pregnant again. Although psychiatric treatment and counselling managed to dissuade R from terminating her third pregnancy, she went ahead with surgery to remove both her fallopian tubes. A year after the delivery of her second child, R sued the Government of Malaysia ('GOM') and 19 of its doctors at the Selayang Hospital for negligence. Well after the trial had commenced and after R's expert witness had completed giving his evidence, the GOM conceded liability in a consent judgment resulting in R withdrawing her

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claim against the rest of the defendants and the trial proceeding only on the issue of assessment of damages. The High Court awarded R RM22,394 as special damages, RM470,000 as general damages (made up of RM260,000 for pain and suffering and loss of amenities of life, RM150,000 as aggravated damages and RM60,000 for future damages) and RM150,000 for getting-up fees and out-of-pocket expenses. The GOM appealed against the awards for pain and suffering, aggravated damages and getting-up fees and out-of-pocket expenses.

Held, unanimously allowing the appeal in part with RM15,000 costs to R:

(1) With respect to the award for pain and suffering, the sum of RM260,000 awarded by the High Court was reasonable considering the injuries that were inflicted on R's bladder and the three surgeries she had to undergo following the negligent act (see para 35).

(2) With regard to aggravated damages, R's complaint was that the medical officers at the hospital delayed in dealing with her complaints and that the GOM delayed in admitting liability. Here, we are dealing with a public hospital catering to public needs and public interests and it could not be said that there was exceptional and contumelious conduct in committing the wrong. As such, the High Court's award was set aside and replaced with aggravated damages in the sum of RM80,000 (see para 39).

(3) On the issue of getting-up fees and out-of-pocket expenses, as the trial on liability had started and R's lawyers had procured all relevant expert witnesses for the trial, the High Court's global award of RM150,000 for this head of damages was affirmed (see paras 40–41).

[Bahasa Malaysia summary

Responden ('R') yang merupakan seorang doktor perubatan berusia 32 tahun yang mengendalikan klinik estetik dengan suaminya sebagai pengurus klinik, memutuskan untuk melahirkan anak keduanya secara normal di hospital kerajaan Selayang. R mendaftar sebagai pesakit dengan bayaran penuh, membolehkannya memilih konsultan pilihannya untuk bersalin. Walau bagaimanapun, apabila dia tiba di hospital untuk bersalin pada awal pagi hari Ahad, dia mendapati bahawa konsultan pilihannya tidak berkerja pada hujung minggu dan pegawai perubatan yang lebih muda di hospital tersebut merawatnya. Oleh kerana terdapat tanda-tanda kesusahan janin, keputusan dibuat untuk melakukan pembedahan caesarean secara kecemasan. R melahirkan seorang bayi perempuan yang sihat. Walau bagaimanapun, semasa pembedahan, pundi kencing R telah cedera yang, antara lain, menyebabkan air kencing bocor ke dalam rongga peritonealnya yang mengakibatkan jangkitan dan keradangan. Satu pembedahan telah dilakukan untuk membendung air kencing yang bocor dan tiub saliran diletakkan di dalam perut. Beberapa hari

kemudian, semasa tiub saliran dikeluarkan, ianya telah terputus dan terdapat sebahagian tiub yang masih di dalam perut. R sekali lagi dibedah untuk mengeluarkan bahagian tiub yang tertinggal tersebut. Kesakitan dan penderitaan yang dialami R akibat pembedahan, ditambah dengan tidak dapat bersama dan menjaga bayinya yang baru lahir pada hari-hari selepas kelahiran memberi kesan buruk kepadanya. Dia mengalami kemurungan dan kebimbangan yang teruk dan mengambil masa tiga bulan untuk pulih tekanan tersebut dan tidak dapat bekerja dalam tempoh itu. Apabila dia tiba-tiba hamil untuk kali ketiga pada dua tahun kemudian, R mengalami gangguan kecemasan ante-natal yang teruk yang menyebabkan dia mahu menggugurkan kehamilannya dan mengeluarkan tiub fallopiannya untuk mengelak daripada hamil lagi. Walaupun rawatan psikiatri dan kaunseling berjaya menghalang R daripada menggugurkan kehamilan ketiganya, dia meneruskan pembedahan untuk mengeluarkan kedua-dua tiub fallopiannya. Setahun selepas kelahiran anak keduanya, R menyaman Kerajaan Malaysia ('KM') dan 19 doktor di Hospital Selayang kerana kecuaian. Selepas perbicaraan bermula dan selepas saksi pakar R selesai memberikan keterangannya, KM mengakui liabiliti dalam penghakiman persetujuan yang mengakibatkan R menarik balik tuntutannya terhadap defendan yang lain dan prosiding perbicaraan ini hanya mengenai isu penilaian ganti rugi. Mahkamah Tinggi menganugerahkan kepada R sebanyak RM22,394 sebagai ganti rugi khas, RM470,000 sebagai ganti rugi am (terdiri daripada RM260,000 untuk kesakitan dan penderitaan dan kehilangan kemudahan hidup, RM150,000 sebagai ganti rugi teruk dan RM60,000 untuk ganti rugi masa depan) dan RM150,000 untuk kos penyediaan guaman dan perbelanjaan di luar poket. KM merayu terhadap jumlah kerugian kesakitan dan penderitaan, ganti rugi teruk dan kos penyediaan guaman dan perbelanjaan di luar poket.

Diputuskan, sebulat suara membenarkan rayuan secara sebahagian dengan kos sebanyak RM15,000 kepada R:

(1) Berkenaan dengan anugerah kerugian kesakitan dan penderitaan, jumlah RM260,000 yang diberikan oleh Mahkamah Tinggi adalah munasabah memandangkan berlaku kecederaan pada pundi kencing R dan tiga pembedahan yang terpaksa dijalaninya berikutan perbuatan cuai tersebut (lihat perenggan 35).

(2) Berkenaan dengan ganti rugi teruk, tuntutan R adalah bahawa pegawai perubatan di hospital itu menangguhkan tuntutannya dan KM lewat mengakui liabiliti. Hospital awam sepatutnya memenuhi keperluan awam dan kepentingan awam. Tidak boleh dikatakan bahawa terdapat kelakuan luar biasa dan mengganggu yang membenarkan perbuatan cuai itu. Oleh itu, anugerah Mahkamah Tinggi telah diketepikan dan digantikan dengan ganti rugi teruk berjumlah RM80,000 (lihat perenggan 39).

(3) Mengenai isu kos penyediaan guaman dan perbelanjaan di luar poket, memandangkan perbicaraan mengenai liabiliti telah bermula dan peguam R telah memanggil semua saksi pakar yang berkaitan, anugerah global Mahkamah Tinggi sebanyak RM150,000 untuk ganti rugi ini telah dikekalkan (lihat perenggan 40–41).]

Cases referred to

Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal [2018] 3 MLJ 281; [2018] 3 CLJ 427, FC (refd)
Hasniyati bt Hassan & Anor v Kerajaan Malaysia [2022] MLJU 376, HC (refd)
Lee Bang v Nadzri [1965] 2 MLJ 186 (refd)
Sheela Christina Nair v Regency Specialist Hospital Sdn Bhd & Ors [2016] MLJU 1899; [2016] 9 CLJ 267, HC (refd)
Tan Cheong Poh & Anor v Teoh Ah Keow [1995] 3 MLJ 89, CA (refd)

Appeal from: *Norfazlin bt Zamani v Kerajaan Malaysia & Ors* [2022] MLJU 3696 (High Court, Shah Alam)

Noerazlim bt Saidil (with Natrah bt Mazman) (Attorney General's Chambers) for the appellants.
Karthi Kanthabalan (with Aaika Zulaika bt Mohd Yusop) (PS Ranjan & Co) for the respondent.

Azmi Ariffin JCA:

INTRODUCTION

[1] This is a medical negligence action filed by the plaintiff against the Government of Malaysia who is named as the first appellant/ first defendant in this suit. The plaintiff suffered *serious bladder* and *abdominal injuries* following a Caesarean section delivery, which necessitated further remedial surgeries. She also suffered *serious psychiatric injuries* as a result.

[2] The first appellant/first defendant admitted liability some three years later on 11 February 2022 with damages and costs to be assessed. With that, the parties recorded a consent judgment and the claim against the second to 20th defendants was withdrawn with no order as to costs. The trial proceeded only on the issue of quantum (assessment of damages and costs).

[3] On 1 July 2022, the learned High Court judge awarded plaintiff the sum of *RM492,392* as damages and the sum of *RM150,000* as costs.

[4] The breakdown of the figures is reproduced herein:

MAKA DENGAN INI DIHAKIMI bahawa gantirugi dan kos dibayar oleh

Defendan Pertama kepada Plaintif seperti berikut:

		RM	RM
A	Gantirugi Khas		
1.	Perbelanjaan hospital dan perubatan	3,640-00	
2.	Perbelanjaan perjalanan dan perbelanjaan sampingan	1,254-00	
3.	Nilai penjagaan oleh ahli keluarga	2,500-00	
4.	Kos mendapatkan perintah untuk penzahiran rekod perubatan	tiada awad	
5.	Kehilangan pendapatan (RM5,000 x 3 bulan)	15,000-00	
	Sub-jumlah		22,394-00
B	Ganti rugi Am		
6.	kesakitan dan penderitaan dan kehilangan ameniti hidup		260,000-00
7	gantirugi teruk		150,000-00
	sub-jumlah		410,000-00
C	Gantirugi Am Masa Hadapan		
8.	kos pembedahan		
9.	kesakitan dan penderitaan untuk masa hadapan dan kehilangan ameniti hidup		60,000-00
	Jumlah:		492,394-00
D	Kos		
10.	yuran penyediaan untuk prosiding-prosiding liabiliti dan kuantum dan perbelanjaan hangus		150,000-00
E	Faedah		
11.	Faedah ke atas gantirugi khas pada kadar 4% setahun dari 28 Ogos 2016 hingga tarikh penghakiman liabiliti 1 Julai 2022;		
12.	Faedah ke atas gantirugi pra-bicara, gantirugi am untuk kesakitan dan penderitaan dan kehilangan ameniti hidup dan gantirugi teruk pada kadar 8% setahun dari tarikh penyampaian writ, 1 Oktober 2019 hingga tarikh penghakiman liabiliti, 1 Julai 2022; dan		
13.	Faedah ke atas jumlah penghakiman, termasuk kos pada kadar 5% setahun dari tarikh penghakiman liabiliti 1 Julai 2022 hingga tarikh pembayaran penuh.		

[5] Despite the withdrawal of the action, the second to 20th defendants have

also appealed against the whole of the decision on quantum.

[6] The defendants have appealed against the whole decision on quantum, but the memorandum of appeal only addresses on three items, namely:

(a) the general damages for pain and suffering and loss of amenities of life in the sum of RM260,000;

(b) the aggravated damages in the sum of RM150,000; and

(c) the costs in the sum of RM150,000.

[7] Hence, the appeal before us is only on quantum.

[8] For ease of reference, parties will be referred to as plaintiff and defendants as they were in the High Court.

CHRONOLOGY OF EVENTS

[9] We shall now briefly lay out the background facts leading to the filing of the claim.

[10] The plaintiff who is a medical doctor underwent an emergency caesarean section at the Selayang Hospital on 28 August 2016. It was supposed to be an uneventful and happy occasion. Sadly, on account of the admitted negligence of the attending doctor, the plaintiff suffered serious bladder injuries. This eventually led to psychiatric issues as a result of the bodily harm caused to the plaintiff.

[11] The plaintiff who is a medical doctor was 32 years old and in her second pregnancy at the time of the incident. She had delivered her first baby seven years previously by way of a caesarean section at the Gleneagles Hospital Kuala Lumpur, without any complications.

[12] She was self-employed. She ran an aesthetic clinic together with her husband who worked as a clinic manager. She was the sole doctor in her practice.

[13] She had chosen to have a normal delivery for the second delivery in order for her to have a speedy post-partum recovery so that she could return to work as soon as possible. This was all due to her busy career.

[14] She was therefore keen on a vaginal birth as this method of delivery will allow her to recover quickly. The plaintiff made inquiries and opted to signed up for the Full Paying Patient scheme ('the FPP scheme') at the Selayang

Hospital under the care of Dr Valyakalayil Daniel Philip who was the Head of the Department of Obstetrics and Gynaecology.

[15] The FPP scheme allowed patient to choose a consultant of their choice for ante-natal care and to eventually undertake the delivery of their babies. The plaintiff had chosen Dr Valyakalayil Daniel Philip and was made to believe that he will attend to her delivery. The plaintiff felt reassured that she was in good hands.

[16] The plaintiff had presented herself at the hospital with labour contractions in the early hours of Sunday, 28 August 2016. Her baby had shown signs of foetal distress. A decision was made at 8.36am on the same day to perform an emergency caesarean section in order to save the lives of both mother and baby.

[17] Much to her consternation, she was told that Dr Valyakalayil Daniel Philip was not available on weekends and that Dr Khor Xin Yun, a young medical officer (second defendant) of two years of experience would be on hand to undertake the caesarean operation. The plaintiff felt she did not have any choice but to consent to it.

[18] The operation was carried out and the plaintiff gave birth to a healthy baby girl. Unfortunately, during the operation, Dr Khor Xin Yun negligently caused lacerations to the plaintiff's bladder.

[19] In the immediate post-operative period, the plaintiff was noted to have haematuria (blood-stained urine), which was an obvious sign of bladder injury. However, none of the medical officers and healthcare givers who attended to the plaintiff thereafter noted this sign as serious enough to call for further investigations.

[20] Her bladder injury was finally detected on 30 August 2016. A laparotomy had to be carried out the next day (31 August 2016) during which 1.3 litres of contaminated fluid was found in her peritoneal cavity. The iatrogenic perforation of the bladder had led to the urine leaking into the peritoneal cavity over a period of two days before it was detected which had to be sucked out and cleaned with saline solution. This contaminated urine caused an inflammatory reaction to the tissues of the peritoneum.

[21] On 8 September 2016 (eight days later) during a bedside procedure to remove the portex drain undertaken by undertaken by medical officers, the portex drain snapped leaving a 14-centimetre portion of the drain retained inside the plaintiff's abdomen. The plaintiff had to undergo a relaparotomy on

A the same day for removal of the retained portion of the portex drain. This was her third operation.

[22] The mental strain of her pain and suffering manifested itself soon after. She was also not offered any psychiatric assistance despite being clearly B depressed and anxious whilst she was in the hospital suffering from the complications. Being unable to be with and to care for her new born baby during that precious early post-delivery stage added further to her anguish.

C **[23]** Her recovery was stormy. Her injuries had caused her a great deal of pain and turmoil and she required about three months of convalescence during which she was unable to work. The agony she underwent was so severe that she said she wanted to die if that could stop her pain and the mental anguish she was experiencing. She could not go to her clinic and work during that period.

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[24] The medical condition she experienced this time around was very much in contrast to her first delivery in 2010 when she was discharged from the hospital one day after her delivery and she was back to work two weeks later.

E **[25]** Her troubles did not end with the prolonged suffering from the complications. She became pregnant unexpectedly for the third time in 2018. It was a stressful pregnancy for her and she developed severe antenatal anxiety disorder during the pregnancy. She blamed it on her previous bitter experience during the birth of her second baby at the Selayang Hospital in 2016. F

[26] The traumatic experience affected her gravely this time around. It gradually worsened to such an extent that she wanted to abort the pregnancy despite knowing the medical risks and moral consequences. She also wanted to G throw her baby out of the window and she wanted to surgically remove her fallopian tubes to avoid getting pregnant again.

[27] She had to be persuaded by her obstetrician Dr Maherah bt Kamaruddin (PW3) to continue with the pregnancy. PW3 who was her H attending physician said that it was not easy to convince the plaintiff to change her mind. During this period, the plaintiff had also consulted a psychiatrist one Dr Jannah at University of Malaya Medical Centre.

[28] Following psychiatric treatment and counselling, the doctors managed I to stop the plaintiff from terminating the pregnancy or causing harm to her baby. Unfortunately, the doctors were not able to dissuade her from undergoing a bilateral salpingectomy (removal of both the fallopian tubes) to avoid from getting pregnant again and repetition of the trauma that she had suffered.

[29] Her intention to undergo a salpingectomy was met with initial resistance from the medical personnel attending to her. She was counselled and advised to reconsider her decision as she was too young to take such a drastic measure. Despite such advice, she went ahead and undergo the surgical procedure. Fortunately, she has now made good recovery from her psychiatric injuries and no longer requires treatment.

[30] The plaintiff filed this claim on 28 August 2017 against the first defendant and 19 of its doctors who had attended to the plaintiff during her stay in the hospital.

ADMISSION OF LIABILITY

[31] On 28 September 2020, learned counsel for the defendant formally wrote to the Court to inform that the defendant intended to concede on liability.

[32] Liability was only admitted some 17 months later on 11 February 2022, well after the trial had commenced and after the plaintiff's expert witness, consultant obstetrician and gynaecologist Dr Thaneemalai Jeganathan (PW1) had completed giving his evidence. On the same day, the plaintiff withdrew her claim against the second to 20th defendants and the claim against them was struck out.

THE TRIAL

[33] On the issue of quantum, the plaintiff called two following witnesses to give evidence:

(a) Dr Thaneemalai Jeeganathan (PW1), the Consultant Obstetrician and Gynaecologist from Thomson Hospital, Kuala Lumpur; and

(b) Dr Maherah Kamaruddin (PW2), a senior clinical lecturer on Obstetrics and Gynaecology.

[34] The defendant did not call any witnesses.

THE LAW ON APPELLATE INTERVENTION

[35] An appellate court will not interfere in the trial judge's exercise in an appeal on damages unless it is satisfied that the judge had erred in principle or had made a wholly erroneous estimate of the damage suffered. This principle was reiterated by the Court of Appeal in *Tan Cheong Poh & Anor v Teoh Ah Keow* [1995] 3 MLJ 89 where VC George JCA (as he then was) delivering the judgment of the court said as follows:

The court was advised that the amount being awarded to quadraplegic plaintiffs for pain and suffering and loss of amenities had gone up to some RM180,000 and on that basis, it was submitted that the instant plaintiff should have been awarded between RM140,000 and RM150,000. While we are prepared to say that the RM100,000 awarded under this head was perhaps on the low side, we do not think that it should have been anywhere near RM140,000. However, we also do not think that the RM100,000 was *so manifestly low that this court should increase the amount. It is trite that the appellate court should not give preference to its own figure simply because they disagree with the figure arrived at by the trial judge; it will only interfere if it is satisfied that the judge has acted on a wrong principle of law or has for other reasons made a wholly erroneous estimate of the damage suffered* — see Mallal's Supreme Court Practice (2nd Ed) para 57/1113. Applying that test in the instant appeal, in our judgment this court should not interfere with the trial judge's award of RM100,000 for pain and suffering and loss of amenities. (Emphasis added.)

SUMMARY OF THE LEARNED TRIAL JUDGE DECISION ON QUANTUM

Pain and suffering

(a) plaintiff underwent a number of procedures including a total of three operations. She was warded for 21 days at the Selayang Hospital as a result of the defendant's negligence;

(b) plaintiff suffered psychiatric problems immediately after the birth of her second baby and again manifested itself during her third pregnancy some two years later;

(c) after the delivery of her third baby, the plaintiff became severely depressed and considered throwing her baby out of the hospital window;

(d) plaintiff took steps to undergo removal of her fallopian tubes to avoid getting pregnant again as she did not want to undergo the terrible pain and suffering she went through at the Selayang Hospital;

(e) the traumatic episodes she experienced is substantiated and validated by the defendant's psychiatric expert Dr Ummi Adzlin bt Silim *via* her expert report dated 19 November 2020. Dr Ummi Adzlin bt Silim diagnosed the plaintiff to be suffering from a severe form of antenatal depression;

(f) counsel for the plaintiff proposed that the sum of RM400,000 be awarded as general damages for the pain and suffering and loss of amenities of life suffered by the plaintiff including the psychiatric trauma she experienced.

(g) counsel for the defendant suggested the sum of RM50,000; and

(h) the court awarded the sum of RM260,000 after taking into consideration the physical injuries suffered such as the iatrogenic injuries to the plaintiff's bladder, haematuria, sepsis etc. and the psychiatric effect on her.

Aggravated damages

(a) defendant admitted liability on 11 February 2022 some 17 months after the exchange of expert opinion and after PW1 had completed his expert evidence;

(b) lackadaisical attitude of the doctors and nurses in ignoring the plaintiff complains of pain and gross haematuria immediately after the caesarean surgery. The signs of bloodstained urine were missed by the medical officer and nurses;

(c) the plaintiff had to again undergo a second laparotomy when the portex drain snapped while it was being pulled out of her body. This was due to the poor vigilance and technique in the use of the portex drain;

(d) the plaintiff was a full fee-paying patient and she had been given to understand that she will be attended to by a specialist of her owned choice. She was instead attended to by a medical officer. She was deprived of her right to be attended to by another specialist to undertake the surgery;

(e) the counsel for the plaintiff suggested RM500,000; and

(f) the court awarded RM150,000 to assuage the sense of wrong and harm caused to the plaintiff by the conduct of the defendants.

Costs

(a) delay admission of liability. The plaintiff's solicitors had undertaken significant getting up on liability and quantum in preparation for a full-blown trial;

(b) defendant counsel proposed RM5,000; and

(c) the court award a global sum combining the getting up costs of RM150,000 for time taken up with extensive getting up on liability, causation and quantum, review of medical records, obtaining medical and expert opinions, preparing the claim to be filed, drafting and filing of the various pre-trial case management documents.

OUR DECISIONS

[36] On *pain and suffering*, we find that the plaintiff had to undergo three surgeries after the negligent act, including the physical injuries to the plaintiff's

bladder. As such we affirm the sum of RM260,000 given by the learned High Court judge.

[37] Useful reference may be made to the High Court case of *Sheela Christina Nair v Regency Specialist Hospital Sdn Bhd & Ors* [2016] MLJU 1899; [2016] 9 CLJ 267 in which the plaintiff suffered perforation of her small intestines during a gynaecological surgery, which required several repair operations and a prolonged period of convalescence. The sum of RM240,000 was awarded as general damages for pain and suffering and the loss of amenities of life.

[38] In *Hasniyati bt Hassan & Anor v Kerajaan Malaysia* [2022] MLJU 376, the first plaintiff had suffered loss of her reproductive organs and a temporary psychiatric injury following the negligence of the doctors who had failed to secure the uterine bleeding following her delivery. The sum of RM300,000 was awarded as general damages for pain and suffering and the loss of amenities of life.

[39] On *aggravated damages*, the learned High Court judge has allowed a sum of RM150,000. The learned counsel for the plaintiff cited the Federal Court decision in *Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal* [2018] 3 MLJ 281; [2018] 3 CLJ 427, in which the plaintiff suffered injuries and loss of vision on his right eye caused by the negligence of Dr Hari Krishnan and Dr Namazie as servant and agent of the hospital. The sum of RM1m was awarded as aggravated damages.

[40] In the instant case, the bad conduct was attributed to the delay in dealing with the plaintiff's complaints and delay in admitting liability. There was a delay of two days in dealing with the complaints of the plaintiff and delay in admitting to liability. Here, we are dealing with a public hospital catering to public needs and public interests and it cannot be said that there was exceptional and contumelious conduct in committing the wrong. Added to that, there was no physical injury to the plaintiff as per Dr Hari's case. As such we allow the appeal in part and set aside the award of RM150,000. We award aggravated damages in the sum of RM80,000.

[41] On the issue of *getting up fee and out-of-pocket expenses*, the plaintiff claimed the getting up fee of RM200,000 and out-of-pocket expenses of RM13,175.15. On the other hand, the defendant urged the court to take into consideration that the case only proceeded on the issue of damages since liability was admitted. Thus, it shortened the days of trial and the plaintiff only had to call three witnesses. It was argued that the court should exercise its discretion and only award RM5,000 for getting up costs including out of pocket expenses. The learned High Court judge decided to award a global sum

of RM150,000 combining the getting up costs and out-of-pocket expenses.

[42] In our considered view, as the trial on liability has started and the plaintiff's solicitors has procured all the relevant expert witnesses, we affirm the decision of the learned High Court judge on this head.

[43] In *Lee Bang v Nadzri* [1965] 2 MLJ 186, Macintyre J stated that where the proceedings in an action have reached a stage when a hearing in open court is inevitable the legal advisers of the parties are entitled to be in readiness for the hearing and must be compensated for the work done irrespective of whether there was actually a hearing in open court or not.

[44] In conclusion, we unanimously allowed the appeal in part with cost of RM15,000 to the plaintiff/respondent subject to allocatur fees.

Order accordingly.

Reported by Ashok Kumar